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| 10/775,634 | 02/10/2004 | Jon D. Pearson | JPA-1 | 1328 |
| 53317 | 7590 | 11/04/2005 | EXAMINER | |
| AQUILLA & ASSOCIATES 88 LOWER CREEK ROAD ITHACA, NY 14850 | | | MAYO, TARA L | |
| | | | ART UNIT | PAPER NUMBER |
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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/775,634
Filing Date: February 10, 2004
Appellant(s): PEARSON, JON D.

Thomas T. Aquilla
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 18 July 2005 appealing from the Office action mailed 18 May 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

| | | |
|-----------|---------------|---------|
| 6,665,898 | GORDON | 12-2003 |
| 6,460,209 | REEDER et al. | 10-2002 |
| 5,787,531 | PEPE | 08-1998 |

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1 through 3, 7 through 9 and 13 through 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Gordon (U.S. Patent No. 6,665,898 B2).

Gordon '898, as seen in Figures 3A, 3B, 4 and 7, shows an apparatus (24) for adjusting firmness, support, or sag of a mattress, comprising:

with regard to claim 1,

a substantially convex cross-sectional shape that is thicker in the center region and gradually thinner toward the edges (claims 5, 7 and 14);

a material and constitution for maintaining the convex shape under the weight of the mattress and a person (Figure 3B); and

a set of dimensions large enough to adjust firmness, support, or sag for the majority of an area of the mattress used by the person (col. 2, lines 38 through 44);

with regard to claim 2,

wherein the apparatus comprises a substantially oval shape;

with regard to claim 3,

Art Unit: 3671

wherein the apparatus is inflatable to achieve adjustability to the level of firmness, support or sag;

with regard to claim 7,

a plurality of inflatable chambers (32B, 32C, 32D);

a substantially convex cross-sectional shape, after inflation, that is thicker in the center region and gradually tapered toward the edges;

an arrangement and shape of the chambers for maintaining the convex shape under the weight of the mattress and a person;

a set of dimensions large enough to adjust firmness, support, or sag for the majority of an area of the mattress used by the person; and

an adjustability of firmness, support, or sag controlled by degree of inflation of said chambers;

with regard to claim 8,

wherein the plurality of chambers are inflatable by way of at least one inflation opening;

with regard to claim 9,

wherein the plurality of chambers are separate, with each chamber inflatable by way of a separate inflation opening (col. 3, line 59 through col. 4, line 4);

with regard to claim 14,

wherein the apparatus is placed between a mattress and a box spring (col. 3, lines 18 through 21);

with regard to claim 15,

wherein the mattress is a king-size mattress (col. 3, line 34);

Art Unit: 3671

with regard to claim 16,

wherein the mattress is a queen-size mattress (col. 3, line 34);

with regard to claim 17,

wherein the mattress is a double-size mattress (col. 3, line 34); and

with regard to claim 18,

wherein the mattress is a twin-size mattress (col. 3, line 14).

With regard to claim 1, as seen in Figure 3B and disclosed in column 2 at lines 38 through 44 and column 3 at lines 3 through 6, the mattress maintains its shape under the weight of a mattress. Furthermore, the apparatus shown by Gordon '898 is capable of being inflated to a degree that it will maintain its shape under the additional weight of a person and meets the claim.

With regard to claim 13, the method steps recited therein are inherent to the use of the device shown by Gordon '898.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4, 5, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon (6,665,898 B2) in view of Reeder et al. (U.S. Patent No. 6,460,209 B1).

Gordon '898 discloses all of the features of the claimed invention with the exception(s) of:

with regard to claims 4 and 10,

baffles comprising a flexible material attached inside the apparatus to the top and bottom thereof, with shorter pieces of the flexible material located toward the edges and with longer pieces of the flexible material located in the center areas; and

with regard to claims 5 and 11,

a plurality of hollow chambers attached inside the apparatus attached to the top and bottom thereof, with shorter hollow chambers located toward the edges and with longer hollow chambers located in the center areas.

Reeder et al. '209, as seen in Figures 11 and 12, show an apparatus (96) for adjusting the firmness, support or sag of a mattress (52) including baffles comprising flexible material attached inside the apparatus to both the top and the bottom thereof preventing the further expansion of the apparatus at those points, with shorter pieces (218) of the flexible material located toward the edges to keep the edges thinner, and with longer pieces (218') of the flexible material located in the center areas to allow the center areas to expand thicker when inflated (col. 22, line 64 through col. 23, line 34); and further comprising a plurality of hollow chambers attached inside the apparatus with shorter hollow chambers (224) located toward the edges and with longer hollow chambers (224') located in the center areas.

Art Unit: 3671

With regard to claims 4 and 10, it would have been obvious to one having ordinary skill in the art of mattress supports at the time the invention was made to modify the device shown by Gordon '898 such that it would include baffles as taught by Reeder et al. '209 to customize desired areas of support.

With regard to claims 5 and 11, it would have been obvious to one having ordinary skill in the art of mattress supports at the time the invention was made modify the device shown by Gordon '898 such that it would include hollow chambers as taught by Reeder et al. '209 to customize desired areas of support.

5. Claims 6 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon (6,665,898 B2) in view of Pepe (U.S. Patent No. 5,787,531 A).

Gordon '898 discloses all of the features of the claimed invention with the exception(s) of:

with regard to claims 6 and 12,

separate inflatable chambers of varying diameters connected to form the convex shape, with chambers having a larger diameter arranged near a center of the apparatus and progressively smaller diameter chambers being arranged toward the edge thereof.

Pepe '531, as seen in Figures 8 and 9, shows an air mattress comprising a plurality of separate inflatable chambers (55) connected to form a convex shape, with chambers having a larger diameter arranged near the center of the mattress and chambers having progressively

Art Unit: 3671

smaller diameters arranged toward the edge thereof to achieve constant pressure distribution over the length of the mattress (col. 2, lines 61 through 65).

With regard to claims 6 and 12, it would have been obvious to one having ordinary skill in the art of mattress supports at the time the invention was made to modify the device shown by Gordon '898 such that it would include inflatable chambers of varying diameter as taught by Pepe '531 to achieve constant pressure distribution over the length of the apparatus.

(10) Response to Argument

In response to Applicant's statement Gordon '898 fails to disclose an apparatus having a substantially convex cross sectional shape as required by each independent claim of the instant application, the Examiner directs Applicant's attention to the recitation of "convex" lobes in claims 5, 7 and 14 of the reference.

In response to Applicant's statement Gordon '898 fails to teach an apparatus comprising a material and constitution for maintaining the convex shape as require by claim 1 of the instant application, the Examiner contends the material forming the chamber inflatable with air meets the claimed functional limitation. As seen in Figure 3B and disclosed in column 2 at lines 38 through 44 and column 3 at lines 3 through 6, the mattress maintains its shape under the weight of a mattress. Furthermore, the apparatus shown by Gordon '898 is capable of being inflated to a degree that it will maintain its shape under the additional weight of a person.

In response to Applicant's statement the device shown by Gordon '898 is not capable of controlling the "firmness, support and sag of the majority of a single sleeping area" as disclosed

Art Unit: 3671

on page 2 at lines 25 through 26 of the instant application, the Examiner notes Gordon '898 expressly teaches use of the prior art device for correcting sag where the greatest portion of a sleeper's weight is located (col. 2, lines 38 through 44). As each of independent claims 1 and 7 recite "a set of dimensions large enough to adjust firmness, support, or sag for the majority of an area of the mattress used by the person", the claimed limitation is met by the prior art device whereby the broadest reasonable interpretation of "the majority of an area of the mattress used by the person" corresponds to the center region of the mattress as taught by Gordon '898. Furthermore, enlargement of the device shown by Gordon '898 would merely require a change in size which is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

The declaration under 37 CFR 1.132 filed 25 January 2005 is insufficient to overcome the rejection of claims 1, 7 and 13 based upon Gordon '898 applied under 35 USC §102(e) as set forth in the last Office action because: a declaration under 37 CFR 1.132 can only be used to overcome a provisional rejection under 35 USC §102(e) to show that the claimed invention is not by another.

The supplemental declaration under 37 CFR 1.132 filed 18 July 2005 is insufficient to overcome the rejection of claims 1 through 18 based upon Gordon '898, Reeder et al. '209 and Pepe '531 as set forth in the last Office action because: it was not timely presented. A declaration under 37 CFR 1.132 (3) after final rejection will only be considered timely if submitted (i) with a first reply after final rejection for the purpose of overcoming a new ground of rejection or requirement made in the final rejection, or (ii) with a satisfactory showing under 37 CFR 1.116(b) or 37 CFR 1.195, or (iii) under 37 CFR 1.129(a).

Art Unit: 3671

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

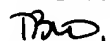
For the above reasons, it is believed that the rejections should be sustained.

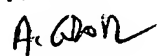
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